

INSURANCE DIVISION[191]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 502.605, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, “Regulation of Securities Offerings and Those Who Engage in the Securities Business,” Iowa Administrative Code.

Iowa Code chapter 502, among other things, prescribes the terms and conditions under which broker-dealers, investment advisers and securities offerings operate. Amendments to Iowa Code chapter 502 were enacted by 2015 Iowa Acts, House File 632, and became effective July 1, 2015.

The amendments proposed to this chapter do the following:

- Require entities that wish to make Form D filings to do so electronically. The Division intends that the amendment to rule 191—50.81(502) will go into effect November 4, 2015, and that securities issuers must be in compliance with this rule by January 1, 2016.
- Require every investment adviser doing business in Iowa to create and implement written procedures to address business continuity and succession planning related to possible instances of disruptions or cessation of business activities. Proposed rule 191—50.47(502) is based on the North American Securities Administrators Association’s Investment Adviser Model Rule and Guidance for Business Continuity and Succession Planning Under the Uniform Securities Acts of 1956 and 2002. The Division intends that the rule will go into effect November 4, 2015, and that investment advisers must be in compliance with this rule by July 1, 2016.
- In rule 191—50.60(502), change the fees for notice filings for investment company securities offerings.
- Clarify the travel reimbursement guidelines that may be used for an audit or inspection made pursuant to Iowa Code section 502.411(4).
- Update the address of the Iowa Insurance Division, Iowa Securities and Regulated Industries Bureau.
- Provide the Web site address for North American Securities Administrators Association information.
- Require Rule 506 offerings to be filed electronically.

The Division intends that these amendments will go into effect November 4, 2015.

Any interested person may make written suggestions or comments on these proposed amendments on or before August 27, 2015. Such written materials should be directed to Gary Marquett, Iowa Insurance Division, Iowa Securities and Regulated Industries Bureau, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa 50319; fax (515)281-5014; e-mail gary.marquett@iid.iowa.gov.

Also, there will be a public hearing on August 27, 2015, at 10 a.m., at the offices of the Iowa Insurance Division, Two Ruan Center, 601 Locust Street, Fourth Floor, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

The Insurance Division’s general waiver provisions at 191—Chapter 4 apply to these rules.

These rules will impose no fiscal impact on the State.

These amendments are intended to implement Iowa Code chapter 502 as amended by 2015 Iowa Acts, House File 632.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Form D” in rule **191—50.1(502)**.

ITEM 2. Amend rule 191—50.2(502) as follows:

191—50.2(502) Cost of audit or inspection.

50.2(1) ~~A~~ The administrator may assess the broker-dealer or investment adviser ~~may be assessed the actual and necessary costs~~ for reasonable charges of travel, lodging, and other expenses incurred by division staff or independent persons conducting an audit or inspection and directly attributable to an audit or inspection made pursuant to Iowa Code section 502.411(4). The assessment of costs of ~~travel meals, lodging, transportation,~~ and other actual and necessary travel expenses, if any, incurred by persons conducting an audit or inspection shall be determined in accordance with one of the following, as agreed by the administrator and the persons conducting an audit or inspection:

a. ~~the~~ The department of administrative services (DAS) state accounting enterprise Accounting Policy and Procedures Manual guidelines for employee travel (<https://das.iowa.gov/state-accounting/sae-policies-procedures-manual>) and the DAS form Travel Section Policy and Procedures (<https://das.iowa.gov/state-accounting/travel-relocation>) in effect at the time of the audit or inspection.

b. The department of administrative services state accounting enterprise Accounting Policy and Procedures Manual guidelines for travel for in-state board, commission, advisory council, and task force member expenses.

c. The United States General Services Administration Continental United States (“CONUS”) per diem travel allowances for lodging, meals and incidental expenses.

d. A reimbursement schedule as agreed by the administrator and the persons conducting the audit or inspection.

50.2(2) and **50.2(3)** No change.

50.2(4) ~~Assessments collected pursuant to this rule shall be paid to the administrator and shall be deposited as provided in Iowa Code section 505.7 by the broker-dealer or investment adviser as directed by the administrator either to the administrator or to the persons conducting the audit or inspection. The persons conducting the audit or inspection shall be reimbursed only for the actual and necessary costs incurred in conducting the audit or inspection.~~

This rule is intended to implement Iowa Code section 502.411(4).

ITEM 3. Adopt the following **new** paragraph **50.42(1)“x”**:

x. Written procedures relating to a business continuity and succession plan, pursuant to rule 191—50.47(502).

ITEM 4. Adopt the following **new** rule 191—50.47(502):

191—50.47(502) Business continuity and succession planning for investment advisers.

50.47(1) After July 1, 2016, every investment adviser registered in Iowa shall establish, implement, and maintain written procedures relating to a business continuity and succession plan. The procedures must be created and implemented in a manner consistent with the Guidance on Business Continuity and Succession Planning for State-Registered Investment Advisers issued by the North American Securities Administrators Association, Inc. (see the division’s Web site, www.iid.iowa.gov). The procedures shall consider the size of the firm, the types of services provided, and the number of locations of the investment adviser, and shall provide for at least the following:

a. The protection, backup, and recovery of books and records.

b. Alternate means of communications with customers, key personnel, employees, vendors, service providers (including third-party custodians) and regulators, including but not limited to providing notice of a significant business interruption or the death or unavailability of key personnel or other disruptions or cessation of business activities.

c. Office relocation in the event of temporary or permanent loss of a principal place of business.

d. Assignment of duties to qualified responsible persons in the event of the death or unavailability of key personnel.

e. Otherwise minimizing service disruptions and client harm that could result from a sudden significant business interruption.

50.47(2) The division shall include as part of its audit or examination process verification of the establishment of a business continuity and succession plan, and the investment adviser shall keep the business continuity and succession plan pursuant to 191—50.42(502).

This rule is intended to implement Iowa Code section 502.302(3) and 2015 Iowa Acts, House File 632.

ITEM 5. Amend paragraph **50.60(3)“b”** as follows:

b. Payment of the applicable fee under Iowa Code section ~~502.302(1)“a.”~~ 502.302(1)“a” as amended by 2015 Iowa Acts, House File 632.

ITEM 6. Amend subrule 50.60(4) as follows:

50.60(4) Amendments to notice filings are made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing is made by filing Form NF or providing the administrator with notice of the withdrawal or termination in a similar format. An amendment, withdrawal, or termination is effective upon receipt by the administrator of the required notice and all fees required by Iowa Code section ~~502.302(1)“a.”~~ 502.302(1)“a” as amended by 2015 Iowa Acts, House File 632.

This subrule is intended to implement Iowa Code section 502.302 and 2015 Iowa Acts, House File 632.

ITEM 7. Amend subrule 50.60(6) as follows:

50.60(6) An investment company that makes a notice filing under subrule 50.60(2) and that pays an initial ~~\$250~~ \$400 filing fee under Iowa Code section 502.302(1)“a” as amended by 2015 Iowa Acts, House File 632, shall pay ~~an additional \$1,250 filing~~ a \$400 renewal fee ~~within 90 days after~~ prior to the notice filing’s annual renewal date, ~~or shall file on Form NF an annual or periodic report of the value of the federal covered securities offered or sold in Iowa, together with a filing fee of one-tenth of 1 percent of the amount of securities sold in excess of \$250,000.~~ Notice filings that are not renewed by the annual renewal date shall expire.

This subrule is intended to implement Iowa Code section 502.302 and 2015 Iowa Acts, House File 632.

ITEM 8. Amend subrule 50.61(1) as follows:

50.61(1) Form U-7 may be obtained by ~~contacting the Iowa Securities and Regulated Industries Bureau, 340 East Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec.@iid.state.ia.us; or from the division Web site at http://www.iid.state.ia.us/division/securities~~ from the NASAA Web site at www.nasaa.org. Form U-7 has been developed under the Small Business Investment Incentive Act of 1980 which prescribes state and federal cooperation in furthering the policies of the Act: diminishing the burden of raising investment capital and minimizing interference with the business of capital formation.

ITEM 9. Amend subrule 50.66(1) as follows:

50.66(1) *Overview of national models.* In cooperation with the securities administrators of other states and with a view to effectuating a policy to achieve maximum uniformity of regulations regarding the registration of securities, registration and business practices of securities industry and investment advisory registrants, and enforcement of antifraud laws, and in the interest of streamlining the rules contained in Chapter 50, the administrator incorporates by reference the following guidelines and statements of policy promulgated by NASAA. This rule does not include any later amendments or editions of the incorporated matter.

~~The official reporter for NASAA statements of policy is the NASAA Reports volume printed by CCH. A copy of the CCH NASAA Reports is available to the public during regular business hours at the office of the administrator. Upon request, and for a reasonable fee not to exceed the cost of providing the service, the administrator will furnish to any person photostatic or other copies of the~~

~~following NASAA guidelines and statements of policy. The office of the administrator is located at and requests may be mailed to the Iowa Securities and Regulated Industries Bureau, 340 Maple Street, Des Moines, Iowa 50319-0066; via E-mail at iowa.sec@iid.state.ia.us; or from the division Web site at <http://www.iid.state.ia.us/division/securities>. NASAA statements of policy may also generally be found at www.nasaa.org. The NASAA Web site allows access to statements of policy, comment letters, model rules, NASAA proposals published for comment, and state rule proposals and may be found at www.nasaa.org, under “regulatory & legal activity.”~~

ITEM 10. Rescind paragraphs **50.80(2)“c”** and **“d.”**

ITEM 11. Reletter paragraph **50.80(2)“e”** as **50.80(2)“c.”**

ITEM 12. Amend rule 191—50.81(502) as follows:

191—50.81(502) Notice filings for Rule 506 offerings.

~~**50.81(1)** An Beginning January 1, 2016, an issuer offering a security that is a covered security pursuant to Section 18(b)(4)(D) of the Securities Act of 1933 shall submit no later than 15 days after the first sale of such federal covered security in Iowa: an electronic filing and fees through www.efdnasaa.org, under “filers and issuers.”~~

~~*a.*— A notice on Form D, including the Appendix;~~

~~*b.*— A consent to service of process on Form U-2; and~~

~~*c.*— A \$100 filing fee, or a \$250 fee for any late filing.~~

~~**50.81(2)** “SEC Form D,” for the purposes of this rule, means the document, as adopted by the SEC and in effect on September 1, 1996, as may be amended by the SEC from time to time, entitled “FORM D: Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption,” including Part E and the Appendix.~~

~~This rule is intended to implement Iowa Code section 502.302(3) and 2015 Iowa Acts, House File 632.~~

ITEM 13. Rescind subrule **50.82(3)**.